*** THE HON'BLE SRI JUSTICE P.S.NARAYANA**

+Writ Petition No.7259 of 2007

% 6-10-2007

C. Pratap Naidu .. Petitioner

And

$ Revenue Divisional Officer,
Kadapa, Kadapa District
And another ..
Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri V.H.V.R.R. Swamy

^ Counsel for respondents : Asst. G.P. for Civil Supplies

?CASES REFERRED :

1. 2005(3) ALT 100
2. 2007(4) ALD 388(F.B.)

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.7259 of 2007

Date: 6th October, 2007

Between :-

C. Pratap Naidu .. Petitioner

And

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Kadapa, Kadapa District
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THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.7259 of 2007

ORDER:-

This Court issued *rule nisi* on 10-4-2007 and in W.P.M.P. No.9263/2007 made the following Order:-

"By the impugned order dated 24-3-2007, the 1st respondent has cancelled the temporary authorization of the petitioner as the Fair Price Shop Dealer of Santamvaripalli village on the ground of commission of the specified irregularities. The order does not disclose that the stigmatic cancellation of authorisation is preceded by any notice or opportunity. In paragraph (3) of the Writ Petition, the petitioner has specifically pleaded that no notice was issued before the cancellation.

In the aforesaid circumstances, the impugned order of the 1st respondent dated 24-3-2007 is suspended, Notice."

2. Sri V.H.V.R.R.Swamy, the learned Counsel

representing the petitioner would submit that this is a case where impugned order was made without putting the petitioner on notice. The learned Counsel also would submit that a distinction cannot be drawn between a temporary dealer and a permanent dealer in the applicability of principles of natural justice. The learned Counsel also would submit that inasmuch as it is a case where the writ petitioner was not put on notice at all, the question of invoking the alternative remedy also may not arise since the Writ Petition is perfectly maintainable inasmuch as the principles of natural justice had been violated. The learned Counsel placed strong reliance on certain decisions to substantiate his submissions.

3. On the contrary, the learned A.G.P. for Civil Supplies would contend that there is no question of invoking the principles of natural justice in the case of temporary dealer for the reason that in a way even from the appointment order, the applicability of the said principles of natural justice had been specifically excluded for the reason that the appointment is made purely on temporary basis and the same is liable for termination at any time without assigning any reason and in the light of the same, it is too much on the part of the writ petitioner to contend that the principles of natural justice to be

observed even in the case of a temporary dealer.

4. The Writ Petition is filed for issuance of a Writ of Certiorari to call for the records of the respondent Ref.C/238/2007 dated 24-3-2007 and quash the same and to pass such other suitable orders.

5. It is stated by the writ petitioner that *he is the authorized temporary dealer of the Fair Price Shop of Sontamvaripalli village, Kadapa District. It is also stated by the petitioner that he was appointed by the respondent on 16-6-2000 by proceedings No.Ref.A/240/2000 and till today he is running the Fair Price Shop without any complaint. It is further stated by the petitioner that the respondent herein had cancelled his authorisation on 24-3-2007 in Ref.C/238/2007 and the same was received by him on 5-4-2007. It is also further stated that in the orders of the respondent it is mentioned that a report was submitted by Tahsildar by proceedings No.B/176/2007, dt.23-3-2007. It is further stated by the petitioner that even though he is a temporary dealer, he continued since 2000 and that he is entitled to atleast show cause notice under Clause 5(4) of the Control Order to submit his explanation to the allegations and he is entitled for enquiry by the Revenue Divisional Officer before passing orders of cancellation and that the Order of the respondent is illegal, improper and clear violation of Clause (5) of the A.P.Public*

Distribution System Control Order, 2001 and also further stated that the cancellation of authorisation is a major punishment. It is also stated by the petitioner that even he is a temporary dealer, the authority issued the authorisation in his favour and it is renewed from time to time as on this day and it is valid upto 31-3-2008.

6. W.V.M.P.No.1638/2007 is filed to vacate the interim order and in the counter affidavit it is stated that *the petitioner was appointed as Fair Price Shop Dealer Sontamvaripalli village of T.Sundupalli Mandal on temporary basis by Revenue Divisional Officer, Kadapa in proceedings Ref.No.A/240/2000 dated 16-6-2000. It is further stated that the Tahsildar, T.Sundupalli had submitted a report in Ref.B/176/2007, dt.22-3-2007 stating that the Fair Price Shop Dealer has committed certain irregularities in distribution of essential commodities to the cardholders and requested to take necessary action against the Fair Price Shop Dealer for the irregularities committed by him such as distributing of essential commodities at higher rates than the rates fixed by the Government, issuing lesser quantities, not submitting the coupons in M.R.O. Office, keeping the rationcards with the dealer and misutilisation of stocks etc., and basing on the report of the Tahsildar, T.Sundupalli, the temporary*

Fair Price Shop Dealership has been cancelled vide Rec.C/238/07, dt.24-3-2007 and also stated that the Fair Price Shop Dealer instead of invoking the statutory provision of appeal to be filed before the Collector (Civil Supplies), Kadapa approached this Hon'ble Court. It is further stated that the Fair Price Shop Dealer is appointed on purely temporary basis and committed irregularities which are grave in nature and also stated that the petitioner cannot complain of any violation of the Control Order since he has no right to continue permanently. It is also further stated that the petitioner has no permanent authorization and he is only a temporary dealer since the earlier dealer of Fair Price Shop namely Surendranath Reddy has resigned and therefore stop gap arrangements were made and now it is proposed to appoint the Fair Price Shop Dealer on permanent basis.

7. The learned A.G.P. for Civil Supplies had pointed out to the Order made in Ref.No.A/240/2000, dt.16-6-2000 wherein it was specified that *the appointment was made purely on temporary basis and liable for termination at any time without assigning any reason and that the appointment shall not devolve any right while filling up the Fair Price Shop vacancy on regular basis.* The learned Counsel for the writ petitioner placed strong reliance on ***S.MALLA REDDY v. M.VIJAYALAKSHMI AND***

OTHERS[1] wherein the Division Bench at para 4 observed as hereunder:-

> *"The aforementioned facts are not in dispute and it is also not in dispute that no show cause notice was ever served on the writ petitioner calling upon the writ petitioner that for the charges leveled against her, why her authorization be not cancelled. This aspect of the matter was taken notice of by learned single Judge. The relevant Distribution Order itself requires issuance of show cause notice to the Fair Price Shop Dealer in case for any reason, the authorization is sought to be cancelled. In other words, the authorization cannot be cancelled without following the principles of natural justice, which includes issuance of show cause notice mentioning therein the various charges on which the authorization is sought to be cancelled, calling upon the Fair Price Shop Dealer to submit his/her explanation to the show cause notice and then holding an enquiry and passing appropriate orders after hearing the Fair Price Shop Dealer. In the instance case, no show cause notice was issued for cancellation of the authorization. The show cause notice issued was only for suspension pending enquiry. Therefore, on that basis, further action of canceling the authorization could not have been taken without following the procedure established in law and for that reason, the order of cancellation is rendered bad in law. There will be no need for the Joint Collector to take up the*

appeal before him since the order of cancellation is to be set aside having been passed without following the principles of natural justice."

It is also submitted that by virtue of the decision of the Full Bench, virtually the rights of the temporary dealer and also the permanent dealer even in the case of the applicability of principles of natural justice in a way had been watered down and the same cannot be compartmentalized. The learned Counsel placed strong reliance on the decision in ***M.VANAJA v. B.BALASESHANNA AND OTHERS***[2] wherein the Full Bench observed:-

"If the expression "any person aggrieved" appearing in Clauses 20 and 21 is interpreted keeping in view the scheme of the Control Order, there cannot be any doubt that the said expression takes within its ambit a temporary Fair Price Shop Dealer and even a cardholder. The temporary Fair Price Shop Dealer is required to comply with all those conditions, which are applicable to a regular or a permanent Fair Price Shop Dealer. His/her functions are identical to that of regular/permanent Fair Price Shop Dealer. His authorization can also be suspended or cancelled or altered in terms of Clause 5(4) of the Control Order. Once the authorization of a permanent/regular Fair Price Shop Dealer is suspended or cancelled and a temporary Fair Price Shop Dealer is appointed in his/her place, the latter acquires a substantive interest to run

the Fair Price Shop. If the order of suspension or cancellation of authorization of the regular/permanent Fair Price Shop Dealer is stayed or set aside, the temporary Fair Price Shop Dealer is the immediate person who is adversely affected inasmuch as his right to operate the Fair Price Shop will get stultified by restoration of the regular/permanent Fair Price Shop Dealer. To put it differently, the authorization of a temporary Fair Price Shop Dealer may not create a vested right in him, but he will certainly be a person affected by reinstatement of the regular/permanent Fair Price Shop Dealer and, therefore, he will certainly have the locus to question the reinstatement of the regular/permanent Fair Price Shop Dealer by filing an appeal under Clause 20 and revision under Clause 21, and we do not see any reason to give a restricted interpretation to the expression "any person aggrieved." It is quite possible to visualize a case in which the appellate authority may, without assigning any reason or for extraneous consideration, restore the authorization of a permanent/regular Fair Price Shop Dealer despite the fact that he may have been found guilty of grave financial or other irregularities and gross violation of the conditions. If a narrow interpretation is placed on the expression "any person aggrieved" appearing in Clauses 20 and 21 and it is held that the temporary Fair Price Shop Dealer and/or the beneficiary of the public distribution system is not "an aggrieved person", then there will be

none to challenge patently illegal or arbitrary order passed by the appellate authority. This will not at all be conducive to larger public interest. Even otherwise, we are convinced that the expression "any person aggrieved" appearing in Clauses 20 and 21 must, keeping in view the scheme of the Control Order, receive liberal construction so as to enable any affected or interested person to challenge the order made by the competent authority under Clause 5."

8. Inasmuch as, the Full Bench had expressed the view keeping the temporary dealer on par with the permanent dealer substantially in several respects, this Court is of the considered opinion that the impugned order to be held to be bad for violation of principles of natural justice. It is made clear that the temporary dealer also is entitled to a notice before making any adverse order as against him. Accordingly, the impugned order is hereby quashed. The Writ Petition is hereby allowed. No order as to costs.

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Justice P.S.Narayana

6th October, 2007

smr

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[1] 2005 (3) ALT 100

[2] 2007 (4) ALD 388 (FB)